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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934.

No. 538

HARRY SEMLER,

Appellant,

vs.

OREGON STATE BOARD OF DENTAL EXAMINERS, L. A. ROSENTHAL, LEONARD R. ANDREWS, CARRIE H. JENKINS, ARTHUR F. WEEKS AND M. C. HARRIS, MEMBERS OF THE STATE BOARD OF DENTAL EXAMINERS.

The appellant in support of the jurisdiction of this Court to review the above entitled cause on appeal, respectfully shows that:

First.

The Supreme Court of the United States has jurisdiction in the appeal of this cause by virtue of a statute of the United States, namely, Section 237 of the Judicial Code, as amended and now published in U. S. Code, Title 28, Section 344.

Second.

This is an appeal from a final judgment of the Supreme Court of the State of Oregon, the highest court of the State of Oregon, and which judgment became final on the 11th

day of September, 1934, on which date said court denied appellant's petition for rehearing.

Third.

The judgment appealed from upholds the constitutionality of a statute of the State of Oregon, the validity of which was drawn in question and challenged on the ground that it violates Section 1 of the XIVth Amendment of the Constitution of the United States. The cause originated on plaintiff-appellant's complaint, by which complaint appellant, a licensed, practicing dentist of Portland, Oregon, sought to enjoin a threatened enforcement of said statute, namely, Section 68-1013, Oregon Code Laws, 1930, as amended by act of Oregon Legislature on March 1, 1933, said amendment being Section 2 of Chapter 166, Oregon Session Laws, 1933, page 208, which statute provides in part that any dentist may have his license revoked or suspended by the Board of Dental Examiners for unprofessional conduct, and states that unprofessional conduct shall mean, among other things, the following:

> "advertising professional superiority or the performance of professional services in a superior manner; advertising prices for professional service; advertising by means of large display, glaring light signs, or containing as a part thereof the representation of a tooth, teeth, bridgework or any portion of the human head; employing or making use of advertising solicitors or free publicity press agents; or advertising any free dental work, or free examination; or advertising to guarantee any dental service, or to perform any dental operation painlessly."

Said statute further provides that "The proceedings under this section may be taken by the board from the matters within its own knowledge * * *." The statute in effect makes the Board of Dental Examiners the accuser,

judge and jury. The statute does provide for an appeal to the State courts from a decision of the Board of Dental Examiners, but as a condition to the right to appeal, it requires the accused first to furnish security for costs.

Fourth.

The appellant here, plaintiff below, filed his complaint, a suit in equity, in the Circuit Court of the State of Oregon for Multnomah County, and therein alleged in substance that he has been a duly licensed dentist of the State of Oregon continually since the year 1918, and as such, since that time, has been engaged in practicing dentistry in the City of Portland, Oregon; that from the beginning of his practice he has used advertising methods now forbidden by the above quoted portion of said statute; that his advertising has always been made truthfully and honestly; that he has contracted in advance for such advertising with several firms and newspapers, which contracts have a long period of time to run, and that he has obligated himself on other contracts with dental assistants and large office space; that a threatened enforcement of said statute would deprive him of his property without due process of law, in violation of Section 1 of Amendment XIV of the Constitution of the United States, together with allegations that said statute violates the organic State law of Oregon. The defendants below, respondents herein, filed a demurrer to said complaint, which demurrer was sustained by said lower court on the 19th day of October, 1933, on the express ground, among others, that said statute does not violate the Constitution of the United States. Whereupon appellant perfected an appeal from said lower court's ruling to the Supreme Court of the State of Oregon, which court on appeal also held said statute to be valid and not in violation of the United States Constitution. Accordingly the Supreme Court of the State of

Oregon entered its judgment upholding said statute on June 26, 1934, whereupon appellant thereafter, and within time allowed by law and by the rules of the Supreme Court of the State of Oregon, duly filed in said Supreme Court his petition for rehearing, and said petition for rehearing was considered by the said Supreme Court of the State of Oregon and was by said court denied on the 11th day of September, 1934, and its said judgment is final.

Fifth.

The question as to the validity of the statute under consideration is of public importance. During the past two years several States have enacted similar statutes in an unique attempt to try to enact into statutory law the ethics of the American Dental Association, under the guise of police powers, and thereunder to empower a small group of politically appointed men on a dental board, on their own initiative, to revoke a fellow dentist's license for advertising his work or prices, even though he advertises them honestly. Such a statute attempts to do indirectly what could not be done directly. Quite obviously such a law is not for the benefit or welfare of the general public but is designed for the financial benefit of a portion of the dental profession and at the expense of the public. This is shown by the fact that there have been statutes in the past, and there are now statutes in a good many States making it unlawful for a dentist to use deceptive or fraudulent advertising. Oregon has had such a law since 1913 and appellant is heartily in accord, but it has only been in the immediate past that the State of Oregon, along with a few other States, has enacted a law making it unlawful for a dentist to advertise, even though the advertising is truthful and not fraudulent or deceptive.

There is a conflict in the decisions of the State courts as to the constitutionality of such a statute. The State

courts of Ohio, Texas, Colorado and Illinois have declared statutes of like import to be unconstitutional:

Ohio: *Ex parte Craycroft*, 24 Ohio N. P. (N. S.) 513.
Texas: *Walker* v. *State*, 68 S. W. (2d) 601.
Colorado: *Chenoweth* v. *State Board of Medical Examiners*, 141 Pac. 132.
Illinois: *Kalman* v. *Walsh*, 189 N. E. 315 (decided Feb. 23, 1934).
Schierson v. *Walsh*, 187 N. E. 921.

whereas it has been held by the State of Washington that a statute of similar import is constitutional:

Laughney v. *Maybury*, 145 Wash. 146.
State Board of Medical Examiners, 159 Pac. 801.

The question involved has not been considered or passed upon by the Supreme Court of the United States, and, in view of the conflict of State decisions, final ruling by this Court is highly desirable. The validity or invalidity of the statute in question is one of concern not only in the State of Oregon but in sister States where legislation of a like nature has of late been and is now being enacted.

In addition to the above, we believe the following cases support and sustain the jurisdiction of the United States Supreme Court in this case.

Bryant v. *Zimmerman*, 278 U. S. 63.
Blodgett v. *Silberman*, 277 U. S. 72.
Miller v. *Schoene*, 276 U. S. 272.
John P. King Mfg. Co. v. *City Council of Augusta*, 277 U. S. 100.
Bandini Petroleum Co. v. *Superior Court of Cal.*, 284 U. S. 8.

This application for appeal to the United States Supreme Court is made to Chief Justice John L. Rand of the

Supreme Court of the State of Oregon, and the necessary papers filed therewith and in support thereof on the 18th day of October, 1934.

Respectfully submitted,

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(5676-C)